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**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

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FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
2001-10-30 P 2:07

In the Matter of:

BRUCE B. LATSHAW

Respondent.

Docket No. FMCSA-2001-10197¹ - 7
(Eastern Service Center)

ORDER APPOINTING ADMINISTRATIVE LAW JUDGE

This matter comes before me upon a July 20, 2001 Motion For Final Order filed by the Field Administrator, Eastern Service Center, Federal Motor Carrier Safety Administration (FMCSA).

1. Background

On May 19, 1999, the Pennsylvania State Director of the Office of Motor Carrier and Highway Safety, Federal Highway Administration² issued a Notice of Claim against Respondent Bruce B. Latshaw.³ The Notice of Claim charged Respondent with one violation of 49 CFR 395.8(e)—making false reports in connection with duty activities. A civil penalty of \$500 was assessed.

Respondent replied to the Notice of Claim on June 1, 1999 and requested an oral hearing.⁴ He denied that his record of duty status (RODS or log) was false, objected to

¹ The former case number is PA-99-110-US0063.

² This position is now the FMCSA Pennsylvania Division Administrator.

³ Exhibit A to the Motion For Final Order.

⁴ Exhibit C to the Motion For Final Order.

the inclusion of a Notice of Abatement in the Notice of Claim, and contended that the penalty was not justified under the relevant statutory criteria. He claimed that “the material facts in dispute are whether his log accurately reflects his duty status as shown, whether the alleged supporting document was his, and even if it can be shown that the alleged supporting document was turned in, or relates to the respondent, whether it accurately reflects his presence at a location other than that shown on his log at the same time.”

In his Motion For Final Order, the Field Administrator argued that Respondent was not entitled to an oral hearing because his Reply to the Notice of Claim raised only questions of law and failed to set forth any material facts in dispute. He further argued that: (1) toll receipts submitted with the Motion For Final Order established that Respondent was driving when his RODS showed him as being off duty, in violation of § 395.8(e); (2) Respondent submitted no evidence demonstrating that the toll receipts in question, which were contained in Respondent’s trip packet, were not his receipts; (3) Respondent submitted no evidence that the toll receipts did not accurately reflect the time and date of issuance; and (4) the penalty was calculated by taking into account the statutory factors mandated by 49 U.S.C. § 521(b)(2)(D).⁵ He submitted a copy of a Penalty Assessment Worksheet used to calculate the \$500 penalty⁶ and asserted that Respondent did not provide any financial information indicating his inability to pay the

⁵ These factors include the nature, circumstances, extent and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other factors as justice and public safety may require.

⁶ Exhibit E to the Motion For Final Order.

penalty. The Field Administrator contended that the penalty was appropriate and took into account that Respondent was found to have submitted 21 false logs out of 21 reviewed, but was being prosecuted for only one violation.

Respondent initially did not respond to the Motion For Final Order. However, on August 12, 2003, I issued an Order giving him another chance to respond. In response to this Order, Respondent submitted a statement dated September 11, 2003, in which he asserted that: (1) the FMCSA investigator inaccurately stated that he was hired by Kistler in November 1998 instead of February 1998; (2) Kistler specifically instructed its drivers to disregard the carrier's policy statement regarding disciplinary action for falsification of records of duty status; (3) it is impossible to verify that the toll receipts presented as evidence are the same ones submitted to Kistler by Respondent because Kistler's Vice President routinely removed toll receipts from driver trip packets in order to justify petty cash reimbursements; and (4) because of a snow emergency declared by the Governor of Pennsylvania, Pennsylvania Turnpike tolls were waived for trucks hauling road salt on January 18, 1999, the violation date cited in the Notice of Claim.

2. Discussion

In my August 12, 2003 Order I stated that this matter would be referred to an Administrative Law Judge for decision if Respondent submitted a response consistent with the terms of that Order. Although not expressly sworn under penalty of perjury, I construe Respondent's response as an affidavit of a person having personal knowledge of the facts alleged, consistent with the terms of the Order.⁷ Therefore, I am denying the Field Administrator's Motion For Final Order and granting Respondent's request for oral

⁷ Respondent stated "I hereby present this statement as truth and fact certified in response to the charges presented against me."

hearing. Because I have not considered the merits of the Motion For Final Order, the denial of the motion is without prejudice, i.e., it does not preclude the Field Administrator from seeking similar relief from the Administrative Law Judge.

Therefore, in accordance with 49 CFR 386.54(a), I hereby appoint an Administrative Law Judge, to be designated by the Chief Administrative Law Judge of the Department of Transportation, to preside over this matter and render a Decision. The proceeding shall be governed by Subparts D and E of 49 CFR Part 386 and all orders issued by the Administrative Law Judge.

It Is So Ordered.



John W. Hill
Chief Safety Officer
Federal Motor Carrier Safety Administration

11-24-03

Date

Docket No. FMCSA-2001-10197

CERTIFICATE OF SERVICE

This is to certify that on this 24th day of November 2003, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

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1017 Huffs Church Road
Alburtis, PA 18011

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Honorable Ronnie A. Yoder
Chief Administrative Law Judge
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W - C - J -